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Objection Date and Time: September 12, 2011 at 4:00 p.m. (Prevailing Eastern Time)

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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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In re: : Chapter 11 Case No.
:
MOTORS LIQUIDATION COMPANY, *et al.*, : 09-50026 (REG)
f/k/a General Motors Corp., *et al.*, : (Jointly Administered)
:
Debtors. : Honorable Robert E. Gerber
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**FEE EXAMINER'S REPORT AND STIPULATED STATEMENT ON
FIFTH AND FINAL FEE APPLICATION OF
BROWNFIELD PARTNERS, LLC**

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**TO: THE HONORABLE ROBERT E. GERBER
UNITED STATES BANKRUPTCY JUDGE**

The Fee Examiner of General Motors Corporation (n/k/a Motors Liquidation Company), appointed on December 23, 2009 (the “**Fee Examiner**”), submits this *Report and Stipulated Statement* in connection with the *Fifth Interim and Final Application of Brownfield Partners, LLC as Environmental Consultants to the Debtors for Allowance of Compensation and Reimbursement of Expenses for the Period from October 1, 2010 Through March 29, 2011 and from June 1, 2009 Through March 29, 2011, Respectively and for the Release of All Holdbacks from Allowed Compensation* [Docket No. 10224] (the “**Final Fee Application**”). With this report, the Fee Examiner states that he has no objection to the award of \$159,582.30 in fees and expenses requested for the periods from October 1, 2010 through March 29, 2011 (the “**Current Interim Periods**”), nor, except as noted below, to the amounts requested in the Final Fee Application.

SUMMARY STATEMENT

In general, the Final Fee Application—covering the period from the firm’s retention on June 1, 2009 through March 29, 2011 (the “**Final Fee Period**”)—appears substantively sound. On September 1, 2011, the Fee Examiner sent Brownfield Partners, LLC (“**Brownfield**”) a draft of this final report and, on September 9, 2011, the parties reached a consensual resolution. This table summarizes the amounts Brownfield has requested and the amounts allowed, to date, for these proceedings:

Fee Application	Fees Requested	Interim Fees Disallowed	Interim Fees Approved or Recommended	Fees Held Back	Expenses Requested	Interim Expenses Disallowed or Recommended	Interim Expenses Allowed or Recommended
First Fee Application (06/01/2009 to 09/30/2009)	\$213,914.75	\$1,389.00	\$212,525.75	\$21,252.58	\$16,294.80	\$1,525.81	\$14,768.99
Second Fee Application (10/01/2009 to 01/31/2010)	\$381,757.40	\$9,789.75	\$371,967.65	\$37,196.77	\$27,480.81	\$2,631.31	\$24,849.50
Third Fee Application (02/01/2010 to 05/31/2010)	\$416,398.80	\$11,734.22	\$404,664.58	\$40,466.45	\$14,930.47	\$73.83	\$14,856.64
Fourth Fee Application (06/01/2010 to 09/30/2010)	\$58,415.68	\$0.00	\$58,415.68	\$5,841.57	\$20,125.99	\$18,187.99	\$1,938.00
Current Interim Periods (10/01/2010 to 03/29/2011)	\$152,616.00	\$0.00	\$152,616.00	\$30,523.20	\$6,966.30	\$0.00	\$6,966.30
TOTALS:	\$1,223,102.63	\$22,912.97	\$1,200,189.66	\$135,280.57	\$85,798.37	\$22,418.94	\$63,379.43

Brownfield served as an environmental manager and consultant to the Debtors to evaluate environmental concerns arising from real estate and to complete remediation cost estimates. Throughout these proceedings, Brownfield generally submitted applications consistent with the letter and spirit of the Bankruptcy Code, the U.S. Trustee Guidelines, and the decisions and rules

of the Southern District of New York. When asked about entries or practices, it responded promptly.

BACKGROUND

1. Commencing on June 1, 2009, General Motors Corp. and certain of its affiliates (“**Debtors**”) filed in this Court voluntary cases under chapter 11 of the Bankruptcy Code. On August 31, 2010, the Debtors filed a Joint Chapter 11 Plan and Disclosure Statement [Docket Nos. 6829 and 6830]. The Plan was confirmed on March 29, 2011.

2. On November 16, 2009, Brownfield filed the *First Interim Application of Brownfield Partners, LLC as Environmental Consultants to the Debtors for Allowance of Compensation and Reimbursement of Expenses for the Period from June 1, 2009 Through September 30, 2009* [Docket No. 4457] (the “**First Fee Application**”), seeking fees in the amount of \$213,914.75 and expenses in the amount of \$16,294.80 for total requested compensation of \$230,209.55.

3. On March 17, 2010, Brownfield filed the *Second Interim Application of Brownfield Partners, LLC as Environmental Consultants to the Debtors for Allowance of Compensation and Reimbursement of Expenses for the Period from October 1, 2009 Through January 31, 2010* [Docket No. 5291] (the “**Second Fee Application**”), seeking fees in the amount of \$381,757.40 and expenses in the amount of \$27,480.81 for total requested compensation of \$409,238.21.

4. On April 20, 2010, Brownfield and counsel for the Fee Examiner discussed the fee and expense issues raised, and Brownfield requested additional time to compile supporting materials before the scheduled April 29, 2010 hearing on the First Fee Application. As such, Brownfield and the Fee Examiner agreed to the *Stipulation and Order for Adjournment of*

April 29, 2010 Hearing on First Interim Fee Application of Brownfield Partners, LLC [Docket No. 5632] (the “**First Stipulated Adjournment**”).

5. On April 22, 2010 the Fee Examiner filed the *Fee Examiner’s Preliminary Report on the First Interim Fee Application of Brownfield Partners, LLC* [Docket No. 5565]. That report is incorporated by reference.

6. On March 19, 2010, the Court entered the *Order Pursuant to 11 U.S.C. §§ 327(a) and 330 Authorizing the Debtors to Amend the Terms of Their Engagement With Brownfield Partners, LLC* [Docket No. 5313] (the “**Authorization to Amend**”), approving a fee cap increase from \$200,000.00 to \$1,100,000.00. On June 9, 2010, the Court entered a *Supplemental Order Pursuant to 11 U.S.C. §§ 327(a) and 330 Authorizing the Debtors to Amend the Terms of Their Engagement With Brownfield Partners, LLC* [Docket No. 5980], which authorized an increase in Brownfield’s hourly rates.

7. On June 22, 2010, the Fee Examiner filed the *Fee Examiner’s Report and Statement of Limited Objection to First and Second Interim Fee Applications of Brownfield Partners, LLC* [Docket No. 6084] (the “**First Objection**”), identifying \$2,914.31 in fees and expenses that were objectionable in connection with the First Fee Application and identifying \$12,421.06 in fees and expenses that were objectionable in connection with the Second Fee Application. That report is incorporated by reference.

8. On July 6, 2010, this Court issued an oral ruling that granted Brownfield’s First and Second Fee Applications in part but required a continued holdback of 10 percent of Brownfield’s requested fees. On July 22, 2010, in accordance with the specific findings made by the Court in its bench ruling, the Court entered an omnibus order approving a series of interim fee applications, including the applications submitted by Brownfield. *Order Granting*

(I) Applications for Allowance of Interim Compensation for Professional Services Rendered and Reimbursement of Expenses Incurred from October 1, 2009 Through January 31, 2010 and (II) Applications for Allowance of Interim Compensation for Professional Services Rendered and Reimbursement of Expenses Incurred from June 1, 2009 Through September 30, 2009 (the “**Second Omnibus Order**”) [Docket No. 6402]. The Second Omnibus Order authorized payment to Brownfield of \$334,770.89 for fees and \$24,849.50 for expenses.

9. On August 5, 2010, Brownfield filed the *Third Interim Application of Brownfield Partners, LLC as Environmental Consultants to the Debtors for Allowance of Compensation and Reimbursement of Expenses for the Period from February 1, 2010 Through May 31, 2010* [Docket No. 6541] (the “**Third Fee Application**”), seeking fees in the amount of \$416,398.80 and expenses in the amount of \$14,930.47 for total requested compensation of \$431,329.27.

10. On September 16, 2010, Brownfield and counsel for the Fee Examiner discussed several outstanding issues, and Brownfield requested additional time to compile supporting materials before the scheduled September 24, 2010 hearing on the Third Fee Application (later adjourned to October 26, 2010). As such, Brownfield and the Fee Examiner agreed to the *Stipulation and Order for Adjournment of September 24, 2010 Hearing on Third Interim Fee Application of Brownfield Partners, LLC* [Docket No. 6951] (the “**Second Stipulated Adjournment**”).

11. On September 17, 2010 the Fee Examiner filed the *Fee Examiner’s Preliminary Report on the Third Interim Fee Application of Brownfield Partners, LLC* [Docket No. 6973]. That report is incorporated by reference.

12. On October 19, 2010, Brownfield and counsel for the Fee Examiner discussed several issues raised, and Brownfield again requested additional time to compile supporting

materials before the scheduled October 26, 2010 hearing on the Third Fee Application. As such, Brownfield and the Fee Examiner agreed to the *Stipulation and Order for Adjournment of October 26, 2010 Hearing on Third Interim Fee Application of Brownfield Partners, LLC to Hearing Date of Fourth Interim Fee Application* [Docket No. 7396] (the “**Third Stipulated Adjournment**”).

13. On November 15, 2010, Brownfield filed the *Fourth Interim Application of Brownfield Partners, LLC as Environmental Consultants to the Debtors for Allowance of Compensation and Reimbursement of Expenses for the Period from June 1, 2010 Through September 30, 2010* [Docket No. 7759] (the “**Fourth Fee Application**”), seeking fees in the amount of \$58,415.68 and expenses in the amount of \$20,125.99 for total requested compensation of \$78,541.67.

14. On December 8, 2010, the Fee Examiner filed the *Fee Examiner’s Report and Statement of Limited Objection to Third and Fourth Interim Fee Applications of Brownfield Partners, LLC* [Docket No. 8037] (the “**Second Objection**”), identifying \$27,802.11 in fees and expenses that were objectionable in connection with the Third Fee Application and identifying \$18,187.99 in fees and expenses that were objectionable in connection with the Fourth Fee Application. That report is incorporated by reference.

15. On December 14, 2010, Brownfield and counsel for the Fee Examiner discussed the issues raised, and Brownfield requested additional time to compile supporting materials before the scheduled December 15, 2010 hearing on the Third and Fourth Fee Applications. As such, Brownfield and the Fee Examiner agreed to the *Stipulation and Order for Adjournment of December 15, 2010 Hearing on Third Interim Fee Application of Brownfield Partners, LLC and*

Fourth Interim Fee Application of Brownfield Partners, LLC to Hearing Date of January 6, 2011
[Docket No. 8156] (the “**Fourth Stipulated Adjournment**”).

16. On December 17, 2010, the Court entered an *Order Pursuant to 11 U.S.C. §§ 327(a) and 330 Authorizing the Debtors to Enter into a Third Amendment of the Terms of Their Engagement with Brownfield Partners, LLC* [Docket No. 8165], approving a fee cap increase from \$1,100,000.00 to \$1,300,000.00 for consultant services.

17. On January 10, 2011, the Fee Examiner filed the *Fee Examiner’s Amended Report and Statement of Limited Objection to Third and Fourth Interim Fee Applications of Brownfield Partners, LLC* [Docket No. 8531] (the “**Third Objection**”), identifying \$12,051.86 in fees and expenses that were objectionable in connection with the Third Fee Application and \$18,187.99 in fees and expenses that were objectionable in connection with the Fourth Fee Application. That report is incorporated by reference.

18. On January 19, 2011, the Court entered an *Order Granting the Third and Fourth Applications of Brownfield Partners, LLC for Professional Services Rendered and Reimbursement of Expenses Incurred from February 1, 2010 Through September 30, 2010* [Docket No. 8726]. The Order authorized payment to Brownfield of \$404,664.58 for fees and \$14,856.64 for expenses for the Third Fee Application and \$58,415.68 for fees and \$1,938.00 for expenses in connection with the Fourth Fee Application.

19. On May 12, 2011, Brownfield filed its Final Fee Application, seeking fees in the amount of \$152,616.00 and expenses of \$6,966.30 for the Current Interim Periods and fees in the amount of \$1,223,102.63 and expenses of \$85,798.37 for the Final Fee Period.

APPLICABLE STANDARDS

20. The Final Fee Application has been evaluated for compliance with the *Amended Guidelines for Fees and Disbursements for Professionals in Southern District of New York*

Bankruptcy Cases, Administrative Order M-389 (Bankr. S.D.N.Y. Nov. 25, 2009) (the “**Local Guidelines**”), the *Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed under 11 U.S.C. § 330*, 28 C.F.R. Part 58, Appendix A (the “**UST Guidelines**”), the *Fee Examiner’s First Status Report and Advisory* [Docket No. 5002] (the “**First Advisory**”), and the *Fee Examiner’s Second Status Report and Advisory* [Docket No. 5463] (the “**Second Advisory**”), as well as this Court’s Compensation Order—including the extent, if any, to which variation has been expressly permitted by order.

21. On May 4, 2011, the Fee Examiner sent a memorandum to all Retained Professionals that had filed interim applications summarizing the Court’s prior rulings on compensation issues and a second memorandum addressing the final fee application process of which this report is a concluding part.

22. On July 25, 2011, the Fee Examiner filed the *Final Fee Applications – Status Report* [Docket No. 10617], providing additional comments on the final fee review process.

23. In applying this Court’s rulings to the fee applications for the Current Interim Periods and, with respect to that period, the Final Fee Period, the Fee Examiner established a recommended “safe harbor” for fees related to Fee Examiner and U.S. Trustee inquiries and objections (“**Fee Inquiry Time**”).

A. The Fee Examiner does not object to the lesser of: either (i) the first \$10,000 of Fee Inquiry Time, or (ii) Fee Inquiry Time calculated as 20 percent of the total compensation requested in the pending fee application, whichever is smaller.¹

B. For professionals whose applications contain requests for compensation for “fees on fees” beyond the amount of this safe harbor, the Fee Examiner has reviewed

¹ In other words, the safe harbor for Fee Inquiry Time spent in connection with any application where total compensation exceeds \$50,000 will be \$10,000. For any application where that compensation is less than \$50,000, the safe harbor will be 20 percent of the total compensation requested.

the time detail, all communications with the professional, the nature of the inquiry or deficiencies raised in the Fee Examiner's or U.S. Trustee's objection, the relative magnitude of the deficiencies in comparison to each other and to the professional's overall fee request (past and present), and whether the professional "substantially prevailed" on each inquiry or deficiency the Fee Examiner or U.S. Trustee raised. On the basis of this review, the Fee Examiner has calculated or will calculate a suggested disallowance, ranging from zero to 50 percent for professionals requesting compensation for Fee Inquiry Time.

COMMENTS

Current Interim Periods.

24. **Project Staffing.** Services provided by Brownfield have been provided by two job titles at two billing rates: Principal—\$330.00—and Partner—\$300.00. All of the time billed in the Current Interim Periods was billed at these two rates. In addition, more than 96 percent of the hours billed were at the Principal rate. Brownfield is a boutique firm consisting of three partners, an associate, and minimal part-time non-professional support staff. The services provided by Mr. McMurtry, a principal, were specifically requested by the Debtors. Staffing appears appropriate based on the specialized services provided, particularly in light of extensive negotiations surrounding the creation of the Environmental Remediation Trust during the Current Interim Periods.

Suggested disallowance: none.

25. **Vague Time Entries.** The Fee Examiner has identified one billing entry totaling \$66.00 that inadequately describes the communications involved.

Brownfield has submitted revised time detail, resolving this concern.

Suggested disallowance: none.

26. **Block Billing**. Block billing is prohibited by the UST Guidelines at section (b)(4)(v). “Services should be noted in detail and not combined or ‘lumped’ together, with each service showing a separate time entry.” *Id.* The Fee Examiner identified entries by Brownfield professionals that do not comply with this guideline totaling \$6,732.00.

Brownfield has submitted revised time detail, resolving this concern.

Suggested disallowance: none.

27. **Fee Applications, Fee Examiner Issues, and Monthly Fee Statements.**

Brownfield reports 3.8 billable hours, representing \$321.00 in fees, billed for the preparation of Brownfield’s fee application and its communications with the Fee Examiner. The requested fees are not objectionable.

Suggested disallowance: none.

28. **Expenses**. Brownfield’s requested expense reimbursements are well-documented and appear to be unobjectionable. *See* Final Fee Application, Exhibits D1-D6.

Total suggested disallowance of fees: none.

Total suggested disallowance of expenses: none.

Total recommended disallowance of fees and expenses: none.

Final Fee Period

29. **Project Staffing**. Brownfield provided services at an overall blended rate of \$283.20.

30. **Rate Increases**. On June 9, 2010, the Court entered a *Supplemental Order Pursuant to 11 U.S.C. §§ 327(a) and 330 Authorizing the Debtors to Amend the Terms of Their Engagement With Brownfield Partners, LLC* [Docket No. 5980], authorizing an increase in

Brownfield's hourly rates. As a result, Brownfield professionals' hourly rates increased by 20 percent across-the-board, totaling \$106,145.85. Rate increases of all Retained Professionals are the subject of the *Fee Examiner's Limited Objection to Hourly Rate Increases* [Docket No. 10660] (the "**Rate Increase Objection**"), pending before the Court. However, Brownfield obtained explicit authorization for its rate increase, and it has not increased its rates other than pursuant to Court order. As such, the Rate Increase Objection is not applicable to Brownfield.

31. **Insurance Matters.** The Fee Examiner's review of Brownfield's fee applications identified several time entries for insurance presentations and evaluations of insurance products in connection with environmental remediation. These time entries totaled \$61,615.00, found primarily in the Second and Third Fee Applications. However, the services provided by Brownfield analyzing options for insurance ultimately did not result in the estates' purchase of insurance products, and the matter apparently was abandoned. After discussions with the Debtors and their retained environmental professionals, the Fee Examiner is satisfied that the time spent preparing technical underwriting requests, evaluating insurance products, and meeting with potential insurance providers was reasonable and necessary.

Suggested disallowance for insurance matters: none.

32. **Previous Reductions.** In his review of all prior fee applications, the Fee Examiner has identified block billing, vague time entries, time spent reviewing fee detail, and other specific areas of concern. The overwhelming majority of the time, Brownfield has remedied these concerns or agreed to an appropriate reduction. Brownfield, in connection with its prior fee applications, has been subject to the following reductions of fees:

Lander's Billing	\$321.50
Block Billing	\$1,330.56
Clerical and Administrative Charges	\$6,390.16

Expenses	\$19,157.61
Administrative Mark-up	\$2,245.14
Vague Time Entries	\$545.00
Non-Working Travel	\$9,586.75
Miscellaneous Charges	\$1,260.00
Fee Application Services	\$4,739.00

Total suggested disallowance of fees for Current Interim Periods: none.

Total agreed disallowance for prior interim fee periods: \$45,331.91.

Total suggested disallowance of fees for Final Fee Period: none.

Total suggested disallowance of fees and expenses: \$45,331.91.

CONCLUSION

This *Report and Stipulated Statement* is intended to advise the Court, interested parties, and the U.S. Trustee of the absence of any basis for objection to the Final Fee Application. All professionals subject to the Fee Examiner's review should be aware, as well, that while the Fee Examiner has made every effort to apply standards uniformly across the universe of professionals in this case, some degree of subjective judgment will always be required.

WHEREFORE, the Fee Examiner respectfully submits this *Report and Stipulated Statement* to the Final Fee Application.

Dated: Milwaukee, Wisconsin
September 12, 2011.

GODFREY & KAHN, S.C.

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